

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF COMMERCE

In the Matter of HS and Associates LLC and  
Lee Hanna

**FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDATION**

This matter came on for a Pre-Hearing Conference before Administrative Law Judge Eric L. Lipman on December 23, 2009, at the Saint Paul offices of the Office of Administrative Hearings.

Michael J. Tostengard, Assistant Attorney General, appeared on behalf of the Minnesota Department of Commerce (Department). There was no appearance by, or on behalf of, HS and Associates LLC or Lee Hanna (Respondents). At the conclusion of the Pre-Hearing Conference, the hearing record closed.

**STATEMENT OF THE ISSUES**

1. Whether the Respondents failed to remit monies collected on behalf of its clients in violation of Minn. Stat. § 332.37(10) (2008)?
2. Whether the Respondents demonstrated untrustworthiness in violation of Minn. Stat. § 45.027, subd. 7(4) (2008)?

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. On November 16, 2009, a Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges (Notice of and Order for Hearing) in this matter was mailed to HS and Associates' business address in South Saint Paul and Hastings, Minnesota, and Mr. Hanna's home address in Saint Paul, Minnesota.<sup>1</sup> The Notice of and Order for Hearing indicated that a Prehearing Conference would be held in this matter on December 23, 2009.<sup>2</sup>

2. The Notice and Order for Hearing in this matter includes the following statements:

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<sup>1</sup> See, Affidavit of Jean-Anne Gates (November 16, 2009).

<sup>2</sup> Notice and Order for Hearing, at 1.

Respondents' failure to appear at the prehearing conference may result in a finding that Respondents are in default, that the Department's allegations contained in the Statement of Charges may be accepted as true, and that its proposed disciplinary action may be upheld.

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Pursuant to Minn. Stat. § 45.027, subd. 6 (2008), Respondents may be subject to a civil penalty not to exceed \$10,000 per violation upon a final determination that Respondents violated any law, rule or order.<sup>3</sup>

3. No one appeared at the December 23, 2009 conference on behalf of HS and Associates LLC or Lee Hanna. No prehearing request was made for a continuance, nor was any communication received by the undersigned from HS and Associates LLC or Lee Hanna.

4. The Statement of Charges alleges that:

(a) Respondent HS and Associates LLC was licensed as a debt collection agency by the Department. The license terminated on June 30, 2009. Respondent Lee Hanna at all times owned and operated Respondent HS and Associates LLC. Hanna had a debt collector's license which expired on June 30, 2009, due to failure to renew.

(b) The Department received a complaint from C2C Resources LLC, a collection agency in Atlanta, Georgia. The Department's investigation revealed that a client of C2C Resources which was previously a client of HS and Associates was owed three payments totaling \$2,501.01. HS and Associates converted those funds to its own use.

(c) The Department's investigation further revealed that the Respondents misappropriated at least \$19,000 out of the agency trust account and made transfers to the business operating account, cash, and checks to several bars, Hanna's landlord and to Hanna himself.

(d) Additionally, on January 1, 2008, a wire transfer of \$75,000 was placed into the agency operating account. This amount was later misappropriated for personal expenses, including over \$19,000 to a bar, \$6,000 in cash, and hundreds of dollars to another bar.

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<sup>3</sup> Notice and Order for Hearing, at 4, ¶ 1 and 6, ¶ 10.

(e) The Department's investigation further revealed that Hanna opened a credit card account in the name of John Schnell and misappropriated \$14,389.91 to his own use. Hanna also forged two checks in Schnell's name totaling \$6,500. Hanna was arrested on [June 26, 2009], Court Number 19HA-CR-09-2295, and charged with three felonies. They are Identity Theft (609.527.2) and two counts Check Forgery –False Endorse (609.631.2(2)).

5. The allegations contained in the Statement of Charges are deemed proven and are incorporated into these Findings by reference.

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. §§ 14.50, 45.027 and 326B.84.

2. Respondents received notice of the charges against him and of the time and place of the evidentiary hearing. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. Respondents are in default as a result of their failure, without the Administrative Law Judge's prior consent, to appear at the scheduled Pre-Hearing Conference.

4. Pursuant to Minn. R. 1400.6000, a contested case may be decided adversely to a party who defaults. Upon default, the allegations and claims set forth in the Statement of Charges may be taken as true or deemed proved without further evidence.

5. Based upon the facts set forth in the statement of charges, Respondents failed to remit monies collected on behalf of its clients, and converted the same to personal uses, in violation of Minn. Stat. § 332.37(10) (2008).

6. Based upon the facts set forth in the statement of charges, Respondents violated Minn. Stat. § 45.027, subd. 7(4), by demonstration untrustworthiness.

7. Minn. Stat. §§ 45.027 and 326B.84 empowers the Commissioner to take disciplinary action against the Respondents, for their violations of agency orders, state statute and state rules.

8. The imposition of a disciplinary action against Respondents is in the public interest.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

The Administrative Law Judge recommends that disciplinary action be taken against HS and Associates LLC and Lee Hanna.

Dated: January 14, 2010

/s/ Eric L. Lipman

ERIC L. LIPMAN

Administrative Law Judge

Reported: Digital Recording  
No transcript prepared

## NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Glenn Wilson, Commissioner, Department of Commerce, 85 Seventh Place East, Suite 500, St. Paul, MN 55101 to learn about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.